UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EMPLOYEE PAINTERS' TRUST, et al., Plaintiffs, v. CASCADE COATINGS, et al., Defendants.	CASE NO. C12-0101JLR ORDER GRANTING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

I. INTRODUCTION

Before the court is Plaintiffs'[1] third motion for default judgment against Defendant Mark Schlatter pursuant to Federal Rule of Civil Procedure 55(b)(2). (3d Mot. (Dkt. # 73).) The court has reviewed the motion, the balance of the record, and the

[1] Plaintiffs include: Employee Painters' Trust, Western Washington Painters Defined Contribution Pension Trust, District Counsel No. 5 Apprenticeship and Training Trust Fund, Western Washington Painters Labor Management Cooperation Trust, International Painters and Allied Trades Industry Pension Fund, and International Union of Painters and Allied Trades District Counsel No. 5 (collectively "Plaintiffs").

applicable law. Being fully advised, the court GRANTS Plaintiffs' third motion for default judgment. Plaintiffs are to file a partial satisfaction of judgment based on the prior settlements they have obtained with other Defendants within 10 days of the date of this order.

II. BACKGROUND

A. Factual Background

This is an employee benefits contribution case governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* Plaintiffs originally sued two "Cascade Coatings" entities: (1) Defendant Cascade Coatings, a partnership ("Cascade Partnership"), which is a partnership comprised of Defendants Walter James McLaughlin and Mark Stephen Schlatter (*see* 2d Am. Compl. (Dkt. # 47) ¶ 4), and (2) Defendant Cascade Coatings, Mr. Schlatter's sole proprietorship ("Cascade Proprietorship") (collectively "Cascade Coatings"). (*See id.* ¶ 5.)

This dispute arises as a result of Cascade Coatings' involvement as a subcontractor on the Seattle-Tacoma International Airport Modernization Project ("Airport Modernization Project"). A Project Labor Agreement ("PLA") governs work done on the Airport Modernization Project and requires contractors to adhere to collective bargaining agreements. (*See* 2d Mot. Read Decl. Ex. A (Dkt. # 71-2) at 9 (Art. II §§ 3(b), 4 of the PLA).) In order to work on any part of the Airport Modernization Project, a contractor must sign a "Letter of Assent" agreeing to the terms and conditions of the PLA and collective bargaining agreements. (*Id.*) The PLA and collective bargaining agreements require contractors to submit written reports and pay fringe benefit contributions to trusts

that benefit local unionized construction workers. (*See id.* at 26 (Art. X, § 3 of the PLA).)

On September 12, 2011, Mr. Schlatter executed a letter of assent agreeing to be bound by the terms of the PLA. (*Id.* at 2.) Subsequently, Cascade Coatings submitted two monthly reports to Plaintiff Employee Painters' Trust ("Painters' Trust") listing its employees who performed work covered by the PLA, the number of hours worked, and a calculation of remittances due to Plaintiffs under the PLA and related collective bargaining agreements. (*See generally* 2d Mot. Read Decl. Ex. H.) The September 2011 report indicates that employees of Cascade Coatings did not work any hours under the PLA that month. (*Id.* at 2-3.) The October 2011 report indicates that employees of Cascade Coatings worked 208.5 hours. (*Id.* at 4.) Cascade Coatings did not submit any subsequent reports or payments to Plaintiffs despite the fact that Cascade Coatings employees continued to work on the Airport Modernization Project. (*See generally* 2d Am. Compl.) Thereafter, Painters' Trust initiated this lawsuit because it believed that Cascade Coatings was in breach of its obligations to report employee hours and make contributions pursuant to the PLA, underlying collective bargaining agreements, and ERISA. (*Id.*)

B. Procedural Background

On January 18, 2012, Painters' Trust filed suit against Mr. Schlatter, his business partner Mr. McLaughlin, and Cascade Partnership. (Compl. (Dkt. # 1) ¶ 4.) The complaint sought damages and injunctive relief for Defendants' failure to make employee benefit contributions. (*See id.* ¶¶ 24-35.) On June 27, 2012, Painters' Trust filed an

affidavit of proof of service, which attested to having served "Defendant Cascade Coatings" with a copy of the summons and complaint on April 17, 2012. (Aff. Of Serv. (Dkt. # 8) at 1.) Later, in the parties' joint status report filed on August 17, 2012, Painters' Trust implied that it had served Mr. Schlatter by stating that "[o]nly Walter James McLaughlin has not been served because he cannot be found." (*See* JSR (Dkt. # 12) at 5.)

After the parties' joint status report, Plaintiffs amended their complaint twice. (*See generally* Dkt.) Initially, Painters' Trust amended its complaint on October 3, 2012. (Am. Compl. (Dkt. # 17).) The amended complaint named additional trust plaintiffs and additional defendants, including Cascade Proprietorship, the Port of Seattle, and various insurance companies. (*See id.* ¶¶ 5, 13-15.) The amended complaint asserted bond claims against the new insurance company defendants and a common law unjust enrichment claim against the Port of Seattle. (*See id.* ¶¶ 53-65.) Thereafter, Plaintiffs amended their complaint a second time on July 3, 2013. (See 2d Am. Compl.) Neither Mr. Schlatter, Cascade Proprietorship, nor Cascade Partnership has ever answered Plaintiffs' complaints. (*See* Dkt.)

Next, on August 27, 2013, Plaintiffs filed three motions for entry of default against Mr. Schlatter, Cascade Proprietorship, and Cascade Partnership, separately. (Dkt. ## 48-50.) The court denied these motions because Mr. Schlatter and Cascade Partnership were not properly served with Plaintiffs' first or second amended complaints. (9/30/13 Order (Dkt. # 51) at 9-10.) The court also ordered Plaintiffs to show cause why Cascade Proprietorship should not be dismissed for being an improperly named party in the suit.

(*Id.*) In response to the court's show cause order, Plaintiffs filed a notice of voluntary dismissal as to Cascade Proprietorship. (10/15/13 Not. (Dkt. # 53).)

Subsequently, on November 6, 2013, Plaintiffs filed a motion to dismiss many of their bond claims under Federal Rule of Civil Procedure 41(a)(2). (Mot. to Dismiss (Dkt. # 61).) The court granted this motion to dismiss on December 2, 2013. (12/2/13 Ord. (Dkt. # 67).)

On December 20, 2013, Plaintiffs filed their first motion for default judgment against Mr. Schlatter. (*See* Mot. (Dkt. # 68).) The court denied Plaintiffs' motion for several reasons. (2/10/14 Order (Dkt. # 69).) First, the *Frow* Rule prohibited the court from entering default judgment against Mr. Schlatter. (*Id.* at 7.) Under *Frow*, "when one of several [jointly-liable] defendants . . . defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted." 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2690 (3d ed. 2013) (*citing Frow v. De La Vega*, 82 U.S. 552, 554 (1872)). At the time of their motion, Plaintiffs had not properly dismissed Cascade Partnership or Mr. McLaughlin. (2/10/14 Order at 10.) Accordingly, the court could not enter default judgment against Mr. Schlatter until the court either entered default against, or Plaintiffs properly dismissed, Cascade Partnership and Mr. McLaughlin. Second, the court determined that the *Eitel* factors weighed against granting default judgment. (*See id.*) Finally, the court noted that Plaintiffs had not properly substantiated their damages as required by the Federal Rules of Civil Procedure and the court's Local Rules. (*Id.* at 18.) Specifically, Plaintiffs did not (1) demonstrate that they were legally entitled to the

amount requested, and (2) did not provide the court with a concise explanation of how the amounts were calculated. (*Id.* at 19.)

After the court denied Plaintiffs' first motion for default judgment, on April 10, 2014, Plaintiffs provided the court with notice that they were voluntarily dismissing Cascade Partnership and Walter McLaughlin pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (Not. (Dkt. # 70).) That same day, Plaintiffs filed their second motion for default judgment. (2d Mot. (Dkt. # 71).) With this motion, Plaintiffs filed additional evidence supporting their claim against Mr. Schlatter and the amount of damages requested. (*See generally* Read Decl. (Dkt. # 71-1); Urban Decl. (Dkt. # 71-5); Walker Decl. (Dkt. # 71-3).)

The court denied the Plaintiffs' second motion for default judgment. (5/12/14 Order (Dkt. # 72).) In its order, the court noted that Plaintiffs had cured some of the deficiencies the court had identified in the first motion for default judgment. (*Id.* at 8-9.) Plaintiffs had submitted sufficient evidence to substantiate a prima facie case against Mr. Schlatter; had provided the court with evidence of the appropriate rates for calculating interest and liquidated damages; and had attached sufficient justification to demonstrate that Plaintiffs' request for attorneys' fees was limited to hours worked on claims covered by the PLA. (*Id.*) However, the court found many errors and discrepancies among the three sources that Plaintiffs supplied to determine the total hours worked on the Airport Modernization Project by Defendant's employees. (*Id.* at 9-11.) These discrepancies left the court unable to verify the reasonableness of Plaintiffs' damage calculations. (*Id.*)

On June 2, 2014, Plaintiffs submitted a third motion for default judgment, as a supplemental brief to their second motion.[2] (3d Mot. (Dkt. # 73).) In their motion, Plaintiffs clarify the supporting documentation they have used to calculate the total number of hours worked by Defendant's employees on the Airport Modernization Project. (*Id.* at 3-5.) Also, Plaintiffs supply calculations to substantiate damages should the court rely upon Defendant's certified payroll as a determination of employee hours, rather than an audit conducted by the Washington Department of Labor and Industries ("L&I"). (*Id.* at 7-8; 3d Mot. Ex. B.) Plaintiffs' third motion for default judgment is now before the court.

III. ANALYSIS

A. Applicable Legal Standards for Default Judgment

Entry of default judgment is left to the court's sound discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). A defendant's default does not automatically entitle a plaintiff to a court-ordered judgment because granting or denying relief is within the court's discretion. *Id.* at 1092. In exercising its discretion, the court considers seven factors (the "*Eitel* factors"): (1) the possibility of prejudice to the plaintiff if relief is denied; (2) the substantive merits of the plaintiff's claims; (3) the sufficiency of the claims raised in the complaint; (4) the sum of money at stake in relationship to the defendant's behavior; (5) the possibility of a dispute concerning material facts; (6) whether default was due to excusable neglect; and (7) the preference for decisions on the

[2] Plaintiffs' third motion incorporates their second motion for default judgment in full. (3d Mot. at 2.)

merits when reasonably possible. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

"If the court determines that the allegations in the complaint are sufficient to establish liability, it must then determine the amount and character of the relief that should be awarded." *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1078 (C.D. Cal. 2012) (internal quotations and citations omitted). This is because at the default judgment stage, well-pleaded factual allegations relating to damages are not taken as true. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir.1977); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Thus, the plaintiff must "prove-up" his damages, and the damages sought must not be different in kind or amount from those set forth in the complaint. *Amini Innovation Corp. v. KTY Int'l Mktg.*, 768 F. Supp. 2d 1049, 1053-54 (C.D. Cal. 2011). The court's role is to ensure that the amount of damages is reasonable and is demonstrated by the plaintiff's evidence. *See* Fed. R. Civ. P. 55(b); *LG Elecs., Inc. v. Advance Creative Computer Corp.*, 212 F. Supp. 2d 1171, 1178 (N.D. Cal. 2002) ("[T]he evident policy of [Rule 55(b)] is that even a defaulting party is entitled to have its opponent produce some evidence to support an award of damages.").

B. The *Eitel* Factors Weigh in Favor of Granting Default Judgment

In its order denying Plaintiffs' first motion for default judgment, the court found that the *Eitel* factors weighed against granting a default judgment. (2/10/14 Order at 10-11.) Plaintiffs' failure at that time to establish a prima facie case against the Defendant had led the court to conclude the second, third, and fifth factors weighed against granting

default judgment. (*Id.* at 11-12.) Also, the absence of a prima facie case led the court to find that the fourth factor weighed against granting default judgment, because the potential for material factual disputes rendered such a large award unreasonable. (*Id.* at 15.) The seventh factor weighed against default judgment as well. (*Id.*) Although the first and sixth factors were found to weigh in favor of default judgment, on balance, the *Eitel* factors did not support a default judgment. (*Id.* at 16-18.)

Since then, Plaintiffs have established a prima facie case. In its order denying Plaintiffs' second motion for default judgment, the court noted that Plaintiffs had established a prima facie case against Mr. Schlatter through the submission of additional evidence. (5/12/14 Order at 9.) The court noted documentation showing that Mr. Schlatter agreed to be bound by the PLA's terms; that Cascade Coatings performed work on the Port of Seattle Bus Maintenance Facility, which is governed by the PLA; and that Mr. Schlatter only reported two months of that work. (*Id.*; *see also* Read Decl. Ex. A at 2; Walker Decl. Ex. A; Read Decl. Ex. H).[3]

As a result, the court finds that second, third, fourth, and fifth *Eitel* factors now weigh in Plaintiffs' favor. The second and third *Eitel* factors are often considered together and require that Plaintiffs establish a prima facie case. *Danning v. Lavine*, 572

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[3] Article II, § 4 of the Port of Seattle Project Labor Agreement applies the provisions of collective bargaining agreements to work on the project. (Read Decl. Ex. A. ("The provisions of this Project Labor Agreement (including the Schedule A's, which are the local Collective Bargaining Agreements, as modified by this Agreement, between bona fide contractor groups or representatives and the signatory Unions having covered work that corresponds to Qualifying Work on the Project) shall apply to the work covered by this Agreement.").) Mr. Schlatter signed a Letter of Assent pursuant to the Project Labor Agreement on September 12, 2011. (*Id.* at 2.)

F.2d 1386, 1388 (9th Cir. 1978). Plaintiffs have established a prima facie case. Moreover, there is no possibility of a dispute as to material facts demonstrating Mr. Schlatter's delinquency on contributions required under the PLA. Mr. Schlatter reported, and submitted contributions for only 208.5 hours (*see* 2d Mot. Read Decl. Ex. H at 4), when his own certified payroll reports show his employees worked 1,000 hours in excess of that amount (*see* 2d Mot. Walker Decl. Ex. A).

Therefore, on balance, the *Eitel* factors support a finding of default judgment against the Defendant. As before, the first and sixth factors weigh in Plaintiffs' favor. (*See* 2/10/14 Order at 16-17.) After Plaintiffs' showing of a prima facie case, the second, third, fourth, and fifth factors now weigh in Plaintiffs' favor as well. Only the seventh factor weighs against.

C. Damages Calculation

i. Hours Worked by Defendant's Employees

Plaintiffs submit three sources, each of which indicates a different number of hours worked by Mr. Schlatter's employees on the Airport Modernization Project after Mr. Schlatter signed the Letter of Assent. First, Mr. Schlatter's certified payroll records indicate his employees worked 1,214 hours on the project. (2d Mot. Walker Decl. Ex. A.) Second, an audit conducted by Lindquist LLP at Plaintiff's request indicates 2,148.5 hours. (2d Mot. Walker Decl. Ex. D at 5-6.) Third, an audit conducted by the

Washington Department of Labor and Industries ("L&I") finds a total of 2,188.5 hours[4] worked by Defendant's employees. (2d Mot. Walker Decl. Ex. B.) Having reviewed all three, the court determines that the Labor and Industries audit to be the most accurate determination of hours worked by Mr. Schlatter's employees.

The court cannot rely upon the Lindquist audit due to multiple errors in that audit. A Lindquist employee admits errors in the audit's calculation of hours. (2d Mot. Walker Decl. ¶ 21.) Plaintiffs' counsel believes there are additional errors beyond those noted by the Lindquist employee. (2d Mot. Urban Mot. Decl. ¶ 10.) In addition, reliance on the Lindquist audit is not necessary because the audit does not present an independent factual determination of hours. (2d Mot. Walker Decl. Ex. D at 3.) Instead, the Lindquist audit relies on the findings of the L&I audit and the certified payroll reports. (*Id.*)

In weighing the remaining two sources, the court finds that the L&I audit, rather than Mr. Schlatter's certified payrolls, is the most accurate source of hours in the record. First, Mr. Schlatter's certified payrolls are internally inconsistent. (*See* 2d Mot. Walker Decl. Ex. A.) Mr. Schlatter had certified that no work was performed by his employees on the project from February 26 to March 3, 2012. (*Id.* at 2) However, Mr. Schlatter also submitted a certified payroll report that indicated two employees worked eight-hour days on the project from February 27 to March 2, 2012. (*Id.* at 7.) This internal inconsistency undermines the reliability of Mr. Schlatter's certified payrolls. Second, the L&I audit

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[4] The audit's spreadsheet indicates a Total Time of 2,129.5 hours on the top of the sheet. (2d Mot. Walker Decl. Ex. B at 5-6.) However, this sum does not include fifty-one (51) hours listed under column "TOTAL 1.5 HOURS" and eight (8) hours listed under column "TOTAL 2X HOURS." (*Id.*)

conducted a comprehensive review of numerous payroll documents. Its review included an examination of "payroll records, daily time sheets, witness statements, various documentation provided by workers and associated court cases, along with applicable regulations." (2d Mot. Walker Decl. Ex. B.) Third, the L&I audit took into account the certified payroll records. (*Id.* at 3.) After reviewing "the employees' time records logs, [and the] daily records [Mr. Schlatter] provided," the Department "crosschecked [those sources] against the [Defendant's] certified payroll records." (*Id.*) Fourth, the L&I audit found that inaccuracies in Mr. Schlatter's record-keeping practices are not confined to the inconsistency noted above. The L&I audit notes that Mr. Schlatter's "lack of accurate records impeded" initial attempts to determine hours worked by his employees. (*Id.*)

Relying upon the L&I audit, the court determines Mr. Schlatter did not pay required contributions on 1,980 hours. The 1,980 hours are the difference between the L&I audit's determination of 2,188.5 hours worked by Defendant's employees (*id.* at 5-6), and the 208.5 hours reported by Mr. Schlatter on his October 2011 monthly contribution report (2d Mot. Read Decl. Ex. H at 4).[5]

ii. Contributions and Dues

Plaintiffs request that the calculation of damages for delinquent payments by Mr. Schlatter include employer contributions and employee union dues. (See 3d Mot. Ex. A, 3; 3d Mot. Ex. B, 3.) The court finds that the Defendant is delinquent on employer

[5] The October 2011 monthly contribution report is the only report submitted by Mr. Schlatter to Plaintiffs which indicates his employees worked on the Airport Modernization Project. (*Id.*)

contributions. Also, the court finds that an award of employee union dues is appropriate as to the four employees listed in the October 2011 Monthly Contribution Report filed by the Defendant. (*See* 2d Mot. Read Decl. Ex. H at 4.) However, an award of damages for union dues is not appropriate as to the remaining employees identified in the L&I audit.

Employer contributions are mandatory under the PLA and associated collective bargaining agreements. The PLA requires Mr. Schlatter to "make fringe fund contributions in the amounts . . . contained in the local collective bargaining agreements that serve as the basis for Schedule A" in the Western Washington collective bargaining agreement. (2d Mot. Read Decl. Ex. A at 26 (Art. X, § 3).) In addition, ERISA requires Mr. Schlatter to fulfill his obligations "to make contributions to a multiemployer plan . . . under the terms of a collectively bargained agreement." 29 U.S.C. § 1145. The Western Washington collective bargaining agreement establishes the required contributions in Schedule A. (2d Mot. Read Decl. Ex. B at 22 (Art. 17.8).) Later updates to Schedule A require higher rates of employer contributions. (2d Mot. Walker Decl. Ex. C at 3-10.)

The court finds that an award of employer contributions is appropriate. The PLA required Mr. Schlatter to make contributions per employee hour worked on the Airport Modernization Project according to Schedule A. (2d Mot. Read Decl. Ex. A.) The employer contribution reports (2d Mot. Read Decl. Ex. H), and the L&I audit (2d Mot. Walker Decl. Ex. B), indicate that these payments have not been made for the hours employees worked. The required payments are listed in Exhibit C to the Walker Declaration and correspond to the fringe benefit funds described in the collective

bargaining agreement. (2d Mot. Read Decl. Ex. B at 26-27 (Articles 20.2, 20.3, 20.4, 20.5, and 20.6.1).)[6]

However, the PLA and collective bargaining agreement authorize deduction of union dues from an employee's pay only upon voluntary authorization of the employee. Courts have enforced the payment of union dues by employers when the collective bargaining agreement or trust agreements obligated the employer to do so. *E.g.*, *Emp. Painters' Trust v. J & B Finishes*, 77 F.3d 1188, 1192 (9th Cir. 1996) (per curiam) (executive of signatory business held to personal liability for union dues as required in trust agreements). However, the PLA assented to by Mr. Schlatter does not require that workers be members of a union. (2d Mot. Read Decl. Ex. A at 13 (Art. IV, § 7).) The PLA does require agreement by the employer to "deduct union dues or representation fees," but only from "any employee who executes a voluntary authorization for such deductions." (*Id.*)[7] The collective bargaining agreement also requires employers to

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[6] Effective July 2011, Schedule A requires the following contributions by Mr. Schlatter for each employee hour worked: a $5.16 health and welfare payment, $1.20 IUPAT Pension payment, $1.37 WW Pension payment, $0.46 Training Fund payment, $0.05 Painter Progression payment, $0.05 WWSPE payment, and a $0.06 LMCI payment. (2d Mot. Walker Decl. Ex. C at 3-4.) Effective January 2012, the IUPAT Pension payment increased to $1.62 per hour. (*Id.* at 5.) Effective March 2012, the WW Pension payment increased to $2.20 per hour and the LMCI payment increased to $0.07 per hour. (*Id.* at 6.) Plaintiffs did not request the IUPAT Pension Deduction or the Health and Welfare Deduction (3d Mot. Ex. A.), so the court does not consider them.

[7] The PLA also requires all employees "to comply with the union security provision of the applicable Schedule A." (2d Mot. Read Decl. Ex. A at 13 (Art. IV, § 7).) The court cannot locate this provision in Schedule A or in the portion of the collective bargaining agreement that Plaintiffs have submitted. (*See* 2d Mot. Read Decl. Ex. B.) In any event, the collective bargaining agreement has a similar requirement that employers deduct union dues only upon voluntary authorization by the employee. (2d Mot. Read Decl. Ex. B at 28 (Art. 20.7).)

"agree to administrative dues, commonly known as dues check-off," but limits the requirement to "apply only as to Employees who have voluntarily signed a valid dues deduction authorization card." (2d Mot. Read Decl. Ex. B at 28 (Art. 20.7).) Although later updates to Schedule A include union dues deductions, there is nothing contained in the updates to indicate the voluntary authorization requirement no longer applied. (*See* 2d Mot. Walker Decl. Ex. C at 3-10.)

The court finds adequate evidence to indicate that the four employees listed on the October 11 report authorized deductions from their pay for union dues. Mr. Schlatter previously deducted dues from October 2011 payments to four employees—Richard Eckland, Darren Ereth, Michael Ewing, and Fredrick Swanson.[8] (2d Mot. Read Decl. Ex. H at 4.)

Nonetheless, Plaintiffs have not produced evidence that the remaining employees authorized deduction for union dues. While Plaintiffs include labor organizations (s*ee* 2d Amend. Compl. (Dkt. # 47) at ¶ 3), the court cannot find any indication that the remaining employees—Johnnie Cooley, Maurico Ibarra, Stuart King, Mario Welch, or the "John Doe" employee or employees[9]—had authorized deductions for dues. Understandably, Plaintiffs cannot demonstrate that the unknown "John Doe" employee or employees identified in the L&I audit authorized union dues deductions. But Plaintiffs'

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[8] Schedule A has listed deductions from employee pay for union dues to be 3.3% of gross wages. (2d Mot. Walker Decl. Ex. C.)

[9] The L&I audit noted that the "John Doe" employee may be a single or multiple employees because the audit was not able to ascertain exactly who had worked those hours. (2d Walker Decl. Ex. B.)

failure to demonstrate employee authorization generally leaves the court unable to presume authorization by the unidentified employees.

Therefore, the court awards the Plaintiffs $19,178.66 in damages stemming from Mr. Schlatter's failure to make required employer contributions. This amount is calculated by subtracting the dues of the employees whom the court cannot find had authorized union dues deductions ($583.53) from the amount identified as delinquent payments in Exhibit A to the third motion for default judgment ($19,717.19). (*See* 3d Mot. Ex. A at 2.) Plaintiffs had calculated total delinquent payments by multiplying the 1,980 hours found in the L&I audit by the rates in Schedule A, as updated. (*Id.* at 3; *see also*, 2d Mot. Walker Ex. C.)

iii. Interest Rates and Award of Double Interest

Plaintiffs also request double interest under 29 U.S.C. § 1132(g)(2)(B) and § 1132(g)(2)(C)(i). (3d Mot. at 7; 3d Mot. Ex. A at 7.) ERISA states in relevant part, "the court shall award the plan . . . (B) interest on unpaid contributions, [and] (C) an amount equal to the greater of—(i) interest on the unpaid contributions, or (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the [unpaid employer contributions] . . . ." 29 U.S.C. §§ 1132(g)(2)(B)-(C). The statute awards both interest and liquidated damages to parties who obtain judgments in favor of trusts. *See Plumbers & Pipefitters Nat'l Pension Fund v. Eldridge*, No. 05-35623, 2007 U.S. App. LEXIS 12055, at *3 (9th Cir. May 16, 2007). Prejudgment interest is appropriate as a

form of compensatory relief, but not as a means of punitive damages. *Dishman v. Unum Life Ins. Co. of Am.*, 269 F.3d 974, 988 (9th Cir. 2001).

The various trust agreements require that employers who are delinquent on their payment furnish interest at a rate described in the trust agreements. All of the trusts except the International Painters and Allied Trades Industry Pension Fund set the interest rate at twelve percent (12%) of the delinquent contribution from the due date until the date paid or until the date of a judgment. (2d Mot. Read Decl. ¶ 26; Ex. D at 29 (Art. VIII ¶ 4); Ex. E at 11 (Art. VIII ¶ 4); Ex. F at 11 (Art. VIII ¶ 4).) The International Painters and Allied Trades Industry Pension Fund trust agreement requires the interest rate authorized under 26 U.S.C. § 6626, which was 3% during the period in question. (2d Mot. Read Decl. Ex. G at 32; Read Decl. ¶ 26(e).)

The court finds that the interest rates are not a penalty, but are an appropriate compensatory protection agreed upon under the PLA, collective bargaining agreements, and the applicable trust agreements. Appropriate interest is $4,314.00, which is the interest that had accrued as of the date of filing, $4,203.41, with an additional daily accrual of interest at $5.027 since filing on June 2, 2014. (3d Mot. Ex. A at 7.) Under 29 U.S.C. § 1132(g)(2)(C)(i), the court grants an additional $4,314.00.

iv. Attorneys' Fees and Costs

Plaintiffs request $42,273.88 in attorneys' fees. (3d Mot. at 8.) This is the same amount Plaintiffs had requested in their second motion for default judgment. (2d Mot. at 19). The court's previous order accepted the attached documentation as sufficient to indicate that the attorneys' fees included only hours worked on claims covered by the

PLA. (5/12/14 Order at 9.) Because the third motion does not change the amount and because sufficient evidence was included with the second motion to substantiate attorneys' costs in this amount, the court grants an award of $42,273.88 in attorneys' fees.

Plaintiffs have charged rates of under $200 per hour for legal work. (2d Mot. Urban Decl; James Decl.) These are reasonable rates for ERISA claims. *See, e.g., Oster v. Std. Ins. Co.*, 768 F. Supp. 2d 1026, 1035 (N.D. Cal. 2011) (approving hourly rate of $400 for associates and $150 for paralegals); *Langston v. N. Am. Asset Dev. Corp. Group Disability*, No. 08–2560 SI, 2010 WL 1460201, at *2 (N.D. Cal. Apr. 12, 2010) (approving hourly rate of $550 for partner and $150 for paralegals); *Caplan v. CNA Fin. Corp.*, 573 F. Supp. 2d 1244, 1249 (N.D. Cal. 2008) (approving hourly rates of $350 and $330 for associates). Having reviewed Plaintiffs' billing records, the court finds that the hours expended on this case are reasonable.

Moreover, Federal Rule of Civil Procedure 54(d)(1) grants district courts the discretion to award costs to prevailing parties. Fed. R. Civ. P. 54(d)(1); *Marx v. General Revenue Corp.*, 133 S. Ct. 1166, 1172 (2013). Plaintiffs have incurred $2,227.88 in reasonable costs in the action to date. (2d Mot. Urban Decl.; James Decl.) The court therefore grants Plaintiffs $2,227.88 in costs.

v. Audit Costs

Plaintiffs request reimbursement of $1,403.00 for the cost of an audit of Defendant's payroll. (3d Mot. at 8; 2d Mot. Read Decl. ¶ 28.) The audit, conducted by Lindquist LLP, indicated that the Defendant was delinquent in payments due according to

the trust agreements. (2d Mot. Walker Decl. Ex. D.) Therefore, recovery of the costs of the audit is appropriate.

Plaintiffs' trust agreements authorize the trusts to audit Defendant's records and, in the event the audit finds a delinquency, to recover the costs of the audit. The Employee Painters' Trust Agreement grants the trust authority to "audit the payroll records . . . of an Employer, as [the Trustees] may deem necessary in the administration of the Trust." (Read Decl. Ex. C, Art. VIII, § 3). If the audit determines "that an Employer is delinquent," then the "Employer shall be obligated for the cost of the audit." (*Id.*)[10]

The cost of an audit that uncovers delinquencies is also recoverable under 29 U.S.C. § 1132(g)(2) of ERISA, which concerns recovery actions for delinquent payments to multiemployer plans in violation of 29 U.S.C. § 1145. 29 U.S.C. § 1132(g)(2); 29 U.S.C. § 1145. A court may allow audit costs under 29 U.S.C. § 1132(g)(2)(D) as a portion of "reasonable . . . costs of the action" where plaintiffs demonstrate the audit was integral to the commencement of a suit. Audit costs are also allowable, within a court's discretion, under 29 U.S.C. § 1132(g)(2)(E) "[b]ecause an award of audit costs to the prevailing party is consistent with the policy of encouraging

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[10] The Western Washington Painters Defined Contribution Pension Plan, District Council No. 5 Apprenticeship and Training Trust Agreement, and Western Washington Painters Labor Management Cooperation Trust Agreement contain identical language. (Read Decl. Ex. D (Art. VIII, § 3); Read Decl. Ex. E (Art. VIII, § 3), Read Decl. Ex. F (Art. VIII, § 3).) The International Painters Allied Trade Industry Pension Fund Trust Agreement has language to the same effect. (Read Decl. Ex. G (Art. VI, § 6).)

full and fair contributions" by employers. *Operating Eng'rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1343 (9th Cir. 1988).

Lindquist's audit found that Defendant was delinquent. (2d Mot. Walker Decl. Ex. D at 2.) The audit's findings as to the level of the delinquency were later noted to be erroneous. (*See* 5/12/2014 Order at 11; Walker Decl. ¶ 21; Urban Decl. ¶ 10). But the broad finding of a delinquency is supported by Defendant's certified payroll and by the L&I audit. (2d Mot. Walker Decl. Ex. B; 2d Mot. Walker Decl. Ex. C.) The delinquency in payment by Defendant is not due to the audit's errors in calculation. Rather, when the errors are corrected, it is clear that the Defendant was delinquent. Therefore, recovery of the audit costs is appropriate.

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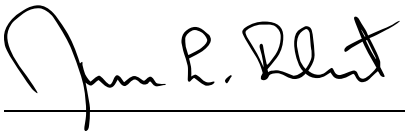
IV. CONCLUSION

For the foregoing reasons, the court GRANTS the third motion for default judgment (Dkt. # 73), and awards delinquent payment damages of $19,178.66, double prejudgment interest of $8,628.00, attorneys' fees of $42,273.88, attorneys' costs of $2,227.88, and audit costs of $1,403.00, totaling $73,671.22. Plaintiffs are to file a partial satisfaction of judgment within 10 days of the date of this order.[11]

Dated this 25th day of June, 2014.



JAMES L. ROBART
United States District Judge

[11] According to Plaintiffs, "much of the full claim has been resolved by settlement against the other defendants in this litigation." (1st Mot. (Dkt. # 68) at 12.) Plaintiffs negotiated a settlement with other Defendants, no longer parties to this action, to recover $45,000. (1st Mot. Read Decl. ¶ 34.) The amounts requested by Plaintiffs in default judgment have not been offset by the settlement. (*Id.*) Plaintiffs commit that, upon issuance of this order granting default judgment, they will file "an appropriate partial satisfaction of judgment document with the court." (1st Mot. at 12 n.2.) Therefore, the court orders Plaintiffs to file a partial satisfaction of judgment with the court within 10 days of the date of this order. The filing should indicate at least $45,000 in partial satisfaction of this judgment.